IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21655 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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KAMLESH @ SOMO VAJESINH GOHIL - Petitioner(s)

Versus

COMMISSIONER OF THE CITY OF SURAT & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/12/2005

ORAL JUDGMENT

1.Kamlesh @ Somo Vajesinh Gohil, petitioner has filed this petition of habeas corpus challenging the order of detention dated 15/9/2005 passed by the Commissioner of

Police, Surat, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. Petition has been filed on 20/10/2005 and matter was placed before this Court (Coram:A.S.Dave, J.) on 25/10/2005. On that day, this Court has issued rule, which is returnable. Therefore, the matter is come for final hearing in this Court.

2. Heard Ms.Banna Dutta, learned advocate for the petitioner. The learned advocate has invited my attention to the order of detention dated 15/9/2005. The petitioner was also detained in Vadodara jail by order dated 15/9/2005. The learned counsel has also invited my attention to the grounds of detention supplied by the authority to the petitioner in this behalf. In the grounds of detention, it is stated that two offences have been registered against the detenu which are as under:

2.1) Offence committed at Varacha Police Station where the criminal case no.5385 of 2005 was registered under Section 66(1)(B), 65(E)(A) and 116 of the Prohibition Act. Offence was committed on 9/8/2005. It was also alleged that he has stored 10 (ten) bottles of country made liquor valued at Rs.300/-.

2.2) Offence committed at Varacha Police Station where the criminal case no.5403 of 2005 was registered under Section 66(1)(B), 65(E)(A), 81 and 116 of the Prohibition Act. Offence was committed on 28/8/2005. It was also alleged that he has stored 240 (two hundred and forty) bottles of country made liquor valued at Rs.48,000/-, one mobile phone, one scooter and cash of Rs.600/- (total Rs.56,600/-).

3. It was alleged that petitioner carrying on anti social activities as carrying on business of liquor and therefore, he happened to be a bootlegger under the provisions of PASA Act as the activities of the petitioner also affects the public health in this behalf.

4. Petitioner has submitted that order of detention is bad on the grounds that there may be only disturbance of law and order and not public order in this behalf. For which he has relied upon the judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491, Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil

Application No.554 of 2000 in the case of Ashok Balabhai Makwana decided on 22/8/2000 and another judgment of this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.), reported in 2000 (1) GLR 816 in the case of Ashokbhai Jivrajbhai v. Police Commissioner.

5. The On behalf of the respondents, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds of detention in this behalf. The authority has not filed affidavit in this behalf.

6. After hearing the learned counsels for the petitioner and respondents and after going through the record of the case and perused the records, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division bench Judgment of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balalbhai Makwana and another judgment of this Court (Coram: C.K.Thakkar and K.M.Mehta, J.J.) in the case of

Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Bombay Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Bombay Prohibition Act or the activities of bootlegging of the detenu. There has to be nexus and link for such activities which disturbs of the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Supreme Court in Piyush

Kantilal Mehta (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8. I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, petition is allowed. The order of detention is quashed and set aside. Kamlesh @ Somo Vajesinh Gohil, detenu is ordered to be set at liberty

if not required in any other case. Direct service is permitted with no order as to cost.

(K.M.MEHTA, J.)

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